

Southwestern Bell Telephone Company and Communications Workers of America, AFL-CIO, District 12, affiliated with Communications Workers of America, AFL-CIO and Communications Workers of America, Local 12208, AFL-CIO. Cases 16-CA-9550 and 16-CA-10038 (formerly 23-CA-8592)

July 14, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

On March 4, 1982, Administrative Law Judge David L. Evans issued the attached Decision in this proceeding. Thereafter, the Charging Parties filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge: The charge in Case 16-CA-9550 was filed on December 5, 1980, by Communications Workers of America, AFL-CIO, District 12, affiliated with Communications Workers of America, AFL-CIO. A complaint based on that charge issued January 27, 1981.¹ The charge in Case 16-CA-10038 was originally filed on July 20 as Case 23-CA-8592 by Communications Workers of America, Local 12208, AFL-CIO.² A complaint upon that charge was issued September 1 and on September 10 the cases were consolidated for purpose of hearing. The complaints allege violations of the National Labor Relations Act, as amended (herein called the Act), by Southwestern Bell Telephone Company (herein called Respondent). Respondent duly filed answers admitting jurisdic-

tion³ but denying the commission of any unfair labor practices. The hearing was held before me on September 24 in Dallas, Texas, and thereafter the General Counsel, Charging Party District 12, and Respondent submitted briefs which have been carefully considered.

Upon the entire record in this proceeding, it is hereby found as follows:

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The complaints herein allege violations of Section 8(a)(5) and (1) of the Act by Respondent. These consolidated cases involve demands and refusals for information. The Union contends it needs certain financial information to process grievances over the use of subcontractors by Respondent. The refusals are admitted. Respondent contends that it is legally justified because the information has no possible relevance to the processing of the grievances involved.

In Case 16-CA-9550 the facts are these: On August 24, 1979, the city council of Cleburne, Texas, granted a franchise to Storer CATV of Texas to provide cable television services in that city. The city council requested that Respondent and the area electrical utility allow joint use of right-of-way and utility poles with Storer. After securing permission from Respondent and the electric company, Storer contracted out the work of stringing the cable TV lines to Cable Tek Construction Co., Inc. To make room for the cable TV lines, Respondent was required to lower many of its own telephone lines to prevent electrical arcing. Respondent contracted out the lowering of its lines on its poles to Cable Tek. That is, Cable Tek had a contract with Respondent to lower certain telephone lines and a contract with Storer to string the cable TV lines on the same poles. Negotiations of the contracts involved were concluded about August 24, 1979, and the work by Cable Tek began immediately thereafter. The city of Cleburne had required that the portion of the work involved herein be completed within 1 year of the granting of the franchise according to the credible testimony of witness L. E. Bolgiano, Respondent's division manager of network distribution services.

The Charging Parties and Respondent have had a contractual relationship for over 30 years. The contracts, as far as relevant herein, have remained identical although the numbering of articles and sections has been changed. Each of the contracts has had grievance and binding arbitration procedures and a "Contract Work" clause which states that, except for certain types of work not involved here:

The Union and the Company agree there shall be no lockout, stoppage, interruption, slowdown or failure to carry out assigned duties because of allocation of work to contractors as outlined below where such contracting of work to others does not

¹ All dates are in 1981, unless otherwise specified.

² The Charging Parties are herein collectively called "the Union."

³ Upon the basis of the admissions by Respondent, I find and conclude that it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, and further that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

involve the layoff of part-timing of regular employees.

On December 3, 1979, the Union filed a grievance alleging that Respondent's contracting out the work of lowering of cable in Cleburne violated past practices and the "Contract Work" section of the agreement between the parties.

On June 5, 1980, the Union filed an arbitration request on the grievance. On September 9, by letter of that date, the Union requested Respondent to furnish it information regarding the letting of the subcontracts, including, *inter alia*: Copies of the agreements between Respondent and the subcontractors; the cost per contract/hour of the work involved; and the amount billed to the cable TV company for reimbursement purposes.⁴ On November 26, 1980, by letter of that date, Respondent, through its attorneys, supplied some of the information requested but declined to produce the three categories of financial information. In declining the requested financial information, Respondent stated:

Southwestern Bell respectfully declines to produce information that relates to the financial nature of the contractual arrangements with our subcontractors. The financial nature of our contractual relationship with subcontractors is proprietary information and is not an issue in the case.

On December 5 there was a telephone conversation between Respondent's attorney, R. Knox Tyson, and the union's attorney, Joelen Snow. In that conversation and by letter dated December 8, 1980, Tyson told Snow that in the pending arbitration Respondent would not be "taking the position that it was 'cheaper' to use contracted labor as opposed to company employees." As a result of this refusal the Union filed the charges in Case 16-CA-9550.

The essential facts involved in Case 16-CA-10038 are these: In the spring of 1981, Respondent contracted out the work of "wrecking," or removal, of certain obsolete telephone lines in the San Antonio-Victoria, Texas, area. On March 1, a series of grievances were filed over the matter, all of which had the following text:

The Union charges the Company with violation of Article I, Recognition and Establishment of the Unit, Article IV, Bases of Compensation, Article VI, Hours of Work, Article XII, Seniority, [and] Article XXX, Contract Work, of the 1980 Departmental Agreement and any other applicable Article when it contracts "bargained for" Craft work to outside contractors

The Union further charges the Company with deliberately contracting out such work while engaged in surplus force condition of affecting the San Antonio area.

The term "surplus" is used by the parties to refer to employees on layoff or in positions to which they were

transferred because of a loss of work. Attached to each grievance was a request for information, *to wit*: number of contractors used; type of work being performed by the contractors; amount of money being paid to the contractors; number of employees employed by the contractors; and name and location of the contractors. While Respondent furnished other information, it refused to furnish the information of how much money was being paid to the contractors and the number of employees employed by the contractors. While the response to the grievances simply stated that the financial information requested was not necessary for the processing of those grievances, it is undisputed that during the discussions between Respondent's Division Manager Beal and Union President Ward, Beal stated that Respondent had employees doing more urgent work and that was the reason for the subcontracting. Specifically no agent of Respondent told the Union that the subcontracting was being utilized by Respondent because of financial considerations.

While the Union claimed that employees were in "surplus" status in the San Antonio region, the evidence disclosed that the employees who would have done the "wrecking" were outside employees while the employees on surplus status were performing such inside duties as stock clerks and office clerical employees. Beal testified credibly, and without contradiction, that no outside plant technicians or cable splicers in the Victoria district or surrounding areas were on surplus status during the period involved and, in fact, the Victoria area employees were working overtime. Beal further credibly testified that Respondent had contracted out this type work for over 25 years.

B. Contentions of the Parties

Southwestern Bell Telephone Company, 173 NLRB 172 (1968), involved the same parent Union, the same contract clauses cited by the grievances herein, and essentially the same grievances and information requests. The Board held that the Union was not entitled to the information because Respondent had never claimed that cost was a factor in deciding to subcontract and none of the clauses cited by the Union referred to cost. The Board found that there was therefore no "probability of relevance" in the information request and found Respondent's refusal to furnish it not to be a violation of the Act.

The General Counsel and the Charging Party, in effect, urge reconsideration of the issue in light of a recent Board case (to be discussed below) and a case history of arbitrations between the parties which was not introduced in the prior proceeding. As stated in General Counsel's brief, page 4:

It is submitted that the need for "probability of relevance" in the instance cases is met through a long history of arbitral decisions wherein arbitrators had found the cost effectiveness of contracting to be a criterion for consideration in reaching a decision to contract out work.

The Union's brief particularizes the portions of the arbitration decisions upon which it and the General Counsel rely for this arbitral history.

⁴ Respondent was to be reimbursed by Storer 110 percent of what Cable Tek charged it to lower telephone lines.

The Union brief's acknowledges that arbitrators have found the above-quoted "Contract Work" section of the contract is not a subcontracting clause but rather a limited no-strike provision. The Union argues, however, that the arbitrators "have fixed the limits of the company's right to subcontract based on other provisions of the contract and upon general principles of contract law."⁵ In support of this contention the Union relies on four arbitration decisions:

The first arbitration decision relied on by the Union is that of arbitrator Leonard Oppenheim, which issued on July 20, 1962. That matter involved a grievance over Respondent's contracting out "house service work" (or maintenance) in new buildings and building additions in San Antonio. The Union contended that the Company's action violated article I, the recognition clause of the contract. In that case arbitrator Oppenheim held that subcontracting was specifically prohibited by neither the recognitional clause nor the limited no-strike clause quoted above. However, the arbitrator went on to agree with authorities which stated: "It can no longer be said that a contract which does not specifically negate contracting out of work must necessarily permit it because such is a natural prerogative of management." The arbitrator found that "standards of reasonableness and good faith" must be observed. The arbitrator repeated eight factors listed by the Company in its briefs as demonstrating that the action of the Company therein was reasonable. The arbitrator held that the Company's action was reasonable on the basis of three of these factors: the contracting was in good faith and for "sound reasons of efficiency and economy"; that past practice showed that the Company contracted out other types of work as well as the type of work involved therein; and that the Union had attempted repeatedly in negotiations to obtain restriction upon the Company's right to contract out and had failed. The arbitrator also found that the contracting out was not done for the purposes of destroying the unit.

The second decision relied on by the Charging Party is that of arbitrator Saul Wallen, dated December 8, 1964. In that case Respondent at its Houston—Springlea subdivision contracted out the burying of 29 service wires; the Union contended that the action violated the recognitional clause, the wage scale clause, and the "Contract Work" clause quoted above. Arbitrator Wallen found that there was, in the sections cited by the Union, no limitation on the right to subcontract but similarly to arbitrator Oppenheim, held that:

... inherent in a labor agreement otherwise silent on the subject is a passive understanding that the right to contract out work exists but that its exercise is limited either by explicit understanding set forth in the agreement or in the parties' past practices or by implicit understanding as revealed by the history of their bargaining.

The arbitrator reviewed the various factors involved in the case before him and concluded that the unexpressed but "inherent" limitations on the use of outside contractors by Respondent are:

... that among these limitations is the fact that such contracting may not result in layoffs or part timing; that it may not be done if the work involves the use of typical telephone skills or involves tasks closely integrated therewith; and that the general limitations of good faith, the existence of sound justification and the absence of ulterior motives are also applicable to the extinct appropriate.

Arbitrator Wallen found Respondent had not crossed these limits and denied the grievance.

The third decision upon which the Charging Party relies is that of arbitrator Clyde Emery, which is dated May 11, 1968. In that case the Union grieved over Respondent's use of contract labor to set two telephone poles in Fort Worth, Texas. Although the grievance was not sustained under the "Contract Work" clause, arbitrator Emery went on to construe the entire contract and adopted the rationale of arbitrators Oppenheim and Wallen to state that Respondent's right to contract out work was not completely unfettered just because there was no such provision in a contract. The arbitrator found that none of the implied criteria for scrutiny of subcontracting actions was violated and concluded:

Thus, it seems that the facts here do not constitute a violation of the agreement's implied provisions. Also, the facts indicate sufficient good faith and reasonableness and absence of intent to injure the bargaining unit in contracting out the pole setting.

After stating that conclusion the arbitrator went on to say:

The Union's brief present an excellent and persuasive argument that the Company would find it less expensive to let its linemen set poles rather than contracting them. However, there was no evidence that the Company was trying to hold down the number of linemen, and it seems certain that if the Company were not saving money by contracting, it would have abandoned that practice.

The final arbitration decision relied upon by the Charging Party is that of arbitrator Sylvester Garrett which is dated January 22, 1969. The grievance involved therein was the contracting out of the setting of one telephone pole. The Union asserted that Respondent's action was a violation of the "Contract Work" clause quoted above. The arbitrator held that Respondent's action was not a violation of that provision but went on to construe the "implied" provisions of the agreement. The arbitrator listed a number of factors which lead him to conclude that Respondent's action was not a violation of any implied provision of a contract. One of the reasons set forth was:

The contracting for performance of the disputed work was undertaken in good faith, for reasons of efficiency and economy, and without any intent to destroy or undermine the plant bargaining unit.

⁵ C.P. br., p. 3

Finding no evidence of bad faith, arbitrator Garrett denied the grievance.

The Union argues that the arbitrators' references to "economy and efficiency," "saving money," and "sound justification" compel a conclusion that, despite absence of contractual reference to cost, an arbitrator would find that financial information regarding subcontracting was relevant. Therefore, the Union argues, that the information is necessary to the processing of the grievances involved herein.

In both cases, Respondent's primary contention is that at no time did it assert to the Union that its subcontracts were entered into for financial reasons. In fact, it notified the Union that an economic defense would not be asserted at arbitration.

In Case 16-CA-9550, Respondent further argues that the cost information cannot be considered relevant because there was no cost to it involved. Storer was to reimburse Respondent 110 percent of whatever Cable Tek charged Respondent to lower its telephone lines on the poles to be shared with the cable TV company. Respondent further argues that the information is not relevant because there is no contractual prohibition against contracting out, although the Union had sought to establish one for years through the processes of collective bargaining. Lacking any express prohibition, the information can be used for nothing. Assuming the existence of the implied prohibition mentioned above, cost effectiveness has never been held to be a prerequisite to the establishment of "good faith" or "reasonableness" in the contracting out. Rather the arbitrators had been more concerned with the impact on the unit, and it is undisputed that no employees were laid off as a result of the contracting out of the lowering of the telephone lines in the Cleburne area. The Cleburne area employees were, in fact, working overtime and Respondent would have had to hire new employees to do the work, then lay them off a year later when the work, according to the directive of the Cleburne City Council, should have been completed.

Relying on principles discussed below, Respondent contends in Case 16-CA-10038 that because there is no expressed contractual provision against subcontracting, the information sought does not relate to a mandatory subject of bargaining and is therefore not presumptively relevant. Respondent further argues that there had been no demonstration of relevance because it had shown that the contracting herein has had no adverse impact on the unit. And Respondent further argues that the work involved was of the type Respondent had regularly contracted out for 25 years.

C. Analysis and Conclusion

There is no dispute that the information request submitted by the Union herein is precisely of the same nature as that considered in the previous Board case involving the parties. The Board held in *Southwestern*, *supra* at 172, 173:

The Trial Examiner concluded that under the "standard of relevancy" of *Acme*,³ the requested cost information pertaining to subcontracting of unit work was broadly relevant to the Union's represen-

tation function. Therefore he found that the Respondent, by refusing to furnish the Union with such information, violated Section 8(a)(5) and (1) of the Act. We do not agree.

It has been long established by court and Board decisions that certain information is presumptively relevant because it bears directly on the negotiation or general administration of the collective-bargaining agreement. Other information, not so obviously related to the Union's bargaining or contract administration or grievance responsibilities, may not be relevant, depending on the circumstances.⁴ In our opinion the relevance of the information requested has not been established herein.

Thus, the record herein shows, as noted above, that the Union requested cost information solely for the purpose of processing specific grievances alleging that the subcontracting violated certain specified Articles of the collective-bargaining agreement between the parties. These pertained to recognition of the Union as bargaining representative of unit employees, wages to be paid such employees for unit work, and a prohibition against strikes protesting the subcontracting of certain kinds of work not involved in the instant case. At no time during the grievance discussions did the Respondent claim that cost was a factor, nor did the Union explain how cost was relevant to its preparation or presentation of the grievances in question. Nor do we see any probability of relevance, as none of the Articles on which the grievances were based refer to cost. Cost was not asserted as a reason for subcontracting, and it would thus appear that the detailed information requested by the Union would not have made the subcontracting any more or less permissible. Under all the foregoing circumstances, we find that the Respondent's obligation to furnish the Union with the cost information requested has not been established and, accordingly, we shall dismiss the complaint in its entirety.

³ *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432.

⁴ See, e.g., *Curtiss-Wright Aeronautical Corp. v. Wright Aeronautical Division v. N.L.R.B.*, 347 F.2d 61 (C.A. 3), *enfg.* 145 NLRB 152; *Sylvania Electric Products, Inc. v. N.L.R.B.*, 358 F.2d 591 (C.A. 1), *enfg.* 154 NLRB 1756, *cert. denied* 385 U.S. 852; *Avco Manufacturing Company*, 111 NLRB 729.

As noted above, the Union and the General Counsel concede that the contract sections cited have not changed in language but argue that an opposite result shall accrue because of two factors: First, the arbitration results outlined above were not considered by the Board in deciding the previous case and they demonstrate the element of probable relevance, that being the "implied" provisions of the contract found to exist by the arbitrators. Second, the General Counsel and the Charging Party argue that a subsequent Board case controls the issue.

Addressing the second contention first, the case relied on is factually distinguishable. In *Equitable Gas Company*, 245 NLRB 260 (1979), enforcement denied 637 F.2d

980 (3d Cir. 1981), the employer, a public utility, without prior notice to or consultation with the union which represented its office clerical employees, contracted out to a bank all initial processing of bill payments. This work was an integral part of the function of the represented unit. The arrangement eliminated three classifications, two immediately and one 6 months thereafter. No employees were immediately laid off as "bumping" rights under the existing contract were exercised, but the "ripple" effect was obvious, and employment opportunities in the unit were unquestionably lost. The Union was told that the reason for the arrangement was financial, as well as practical: As found by the Board, the arrangements resulted in a gain of 2 to 2-1/2 day's time getting payments processed and the deposits credited to the employer's bank account; it resulted in more efficient remittance services and acceleration of cash flow while affording more current updating of customers' files; and it was estimated that the acceleration in the handling of those payments would provide an additional \$700,000 in available cash on deposit for the employer, resulting in considerable savings in interest to the company. The union asked for information as to just what the cost was to the employer, but the employer refused to furnish it.

Upon review of the controlling authorities, the Board found that the employer had violated its duty to bargain over the subcontracting because it held, contrary to the defense, that there had been no past practice of contracting out such routine unit work. The Board went on to find that in *Equitable Gas Company*, *supra* at 265, the refusal to furnish the requested financial information was also a violation:

Having concluded that the contracting out of the remittance work was subject to a duty to bargain in good faith, it follows that the information sought by the Union was relevant to an assessment of alternatives in the context of such negotiations and indeed to determine the degree to which future contracts protection might be necessary to avert similar incursions.

Thus, the Board predicated its holding regarding the failure to furnish information on the fact that Respondent had a duty to bargain before contracting out the billing function of the office clerical employees.

The Board went on to state:

The fact that the Company did not inform the Union that the work was awarded to the bank on the basis of cost considerations is immaterial. Whatever the Company relied upon in taking this step it is difficult to imagine that cost and its interrelationship with savings was a totally alien factor. In any event, any such claim by the employer is worthy of appraisal through good-faith discussions with the Union after disclosure of all facts permitting fair evaluation. An unconfirmed self-saving stance that cost was not a factor is no substitute for disclosure

absent convincing collateral evidence that this was in fact the case.¹²

¹² Such evidence was available in *Southwestern Bell Telephone Company*, 173 NLRB 172, where an 8(a)(5) allegation based on the failure to supply cost information pertaining to subcontracting was dismissed. In that case the subcontracting itself was not challenged, it was restricted to "peak loads," and had been resorted to only "because its employees were too busy and could not handle the work." Furthermore, while the information requested was in aid of union efforts to grieve the subcontracting, the Board viewed the provisions of the contract to which the grievances related as failing to reveal that cost data was enshrouded with a "probability of relevance."

General Counsel and the Charging Party ignore the quoted footnote and rely heavily on the statement that an unconfirmed, self-saving stance that cost is not a factor is no substitute for disclosure absent convincing "collateral" evidence of just what was the reason for the subcontracting. However, neither General Counsel nor the Charging Party suggest why the "collateral" evidence, submitted by Respondent herein, should be considered less than "convincing." Respondent's witnesses testified, without objection or any attempt to impeach, that: the work involved was, in effect "peak load" work; the unit employees were working full time (even overtime); at least in the case of the wrecking of lines in the Victoria area, this was work which was commonly contracted out over the past 25 years; and no employment opportunities were lost to the unit employees. The quoted footnote in *Equitable Gas* makes clear that such evidence distinguished it from the previous *Southwestern Bell* case. The same distinguishing evidence is present here.⁶ Finally, there is a legal distinction to be noted between this case and *Equitable Gas*. In *Equitable Gas* it was held as a predicate for the decision on the refusal to furnish information that the action about which the union sought information was a unilateral action in violation of Section 8(a)(5). Here there is no allegation or suggestion that Respondent had a duty to bargain about the contracting out over which the grievances were filed. In addition to being a legally distinguishing factor, the failure of the General Counsel to allege Respondent's action (which, according to this record, was done without prior a prior notice to or consultation with the Union) constitutes a prior concession that the subcontracting involved herein was not any item requiring bargaining.

Nor do I agree that the arbitration history between the parties supplies the element of probable relevance found missing in their prior Board case. Each of the arbitrators found that there was a standard of good faith or reasonableness which limited the discretion to subcontract, even if there was no express prohibition against, or limit upon, subcontracting in the contract. I agree that this arbitration history is one which, in effect, has become a

⁶ Further distinction between this case and *Equitable Gas* lies in the factor that the employer there did, at least at one point, rely on economic factors as its justification: To wit, more rapid processing of deposits to its account; \$700,000 increase in available cash; and a savings in interest. Also the action of the employer in *Equitable Gas* caused elimination of three job classifications and the reduction of employment opportunities, other factors not present herein.

part of the contract and should be considered in determining probable relevance of cost information requested. But the arbitral criteria for establishing reasonableness are multiple, cost being only one.

If cost is asserted as one of the reasons for the subcontracting action, it is clear that the Union would be entitled to the information as Respondent acknowledges. On the other hand, if other considerations are asserted as the only reasons for the subcontracting, and those other reasons are not established, an arbitrator assuredly would hold that the contracting out is violative of the contract. The arbitrator may, or may not, suspect that economic considerations were the real reason for a contracting out which is made the subject of a grievance. However, disclosure *vel non* of the suspected economic factors would not change the outcome of the arbitration. If the non-economic defense is not established, the arbitrator is going to find a violation of the contract. That is, to paraphrase the Board's reasoning in *Equitable Gas* at 173: If cost is not asserted for subcontracting, the detailed information requested by the Union would not make the subcontracting more or less permissible.

In its brief in support of Case 16-CA-9550, the Union acknowledges that Respondent was making at least a 10-percent profit by the contracting out of the work involved since it was billing Storer 110 percent of whatever Cable Tek charged it. The Union however, poses the hypothetical: Suppose it could be shown that Respondent could have made more profit by using bargaining unit employees; would not an arbitrator hold it unreasonable, therefore contract-violative, to use a subcontractor? Since the Cleburne area employees were fully employed, even working overtime, the hypothetical assumes too much. It assumes that Respondent could have found, hired, supervised, and thereafter terminated temporary employees to perform the work of lowering the lines, and done so at a profit in excess of 10 percent. The improbability is so great as to erode any persuasiveness of the hypothetical argument.

Finally, the Union argues hypothetically: What if Respondent contended that cost was the only factor; would not the Union be entitled to information about efficiency, "the bona fides of the contractor," and the effect of the contracting out on the bargaining unit? I do not know

what counsel means by the term "bona fides of the contractor." The efficiency of the contractor would, of course, come under the umbrella of cost effectiveness and would therefore be producible. Of course, the effect on the unit (i.e., layoffs, reduced, hours, etc.) would be required as the union is always entitled to know the terms and conditions of employment of the unit employees. However, the converse is not necessarily true. The union is not always entitled to financial information regarding subcontractors; a demonstration of probable relevance must be made, as noted in the prior Board case between the parties.

In summary, I find and conclude that the probable relevance of the requested financial information about subcontracting has not been demonstrated since Respondent never asserted an economic defense for its actions and it is clear that Respondent let the subcontracts involved for noneconomic reasons: *To wit*, there were no employees available to do the work, in Cleburne the work was not to be repeated and Respondent would have been required to hire new employees if it did not subcontract, and this the Board or an arbitrator would not force it to do; the Victoria contracting was merely an instance of the type of work which had been regularly contracted out over the last 25 years; no work opportunities were lost in either case; in both cases the bargaining unit employees were working regularly, even overtime; and there is no contention that the contracting out itself was a violation of the Act.

Accordingly, I find and conclude that Respondent had not violated Section 8(a)(5) or (1) of the Act by its refusal to furnish financial information regarding subcontracting, and I shall issue the following recommended:

ORDER⁷

The complaint is dismissed in its entirety.

⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.